81-2314

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ALEXANDER STEVAS,
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No. 82-_____

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1982

RONALD WAYNE TAYLOR,
Petitioner

v.

COMMONWEALTH OF KENTUCKY,
EX REL JENNIFER KAREN MAY,
Respondents

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Kentucky.

PETITION FOR WRIT OF CERTIORARI

Dan Jack Combs
COMBS AND LESTER, P. S. C.
207 Caroline Avenue
Pikeville, Kentucky 41501-0551

Attorney for Petitioner

PRINT MASTER, INC., 800 LANE ALLEN RD., LEXINGTON, KY. 40504, PH. (606) 276-4341

QUESTION PRESENTED

Whether a Kentucky statute, KRS 406.011, that requires the father of a child born out of wedlock be liable to the same extent as a father of a child born in wedlock, for the support of such child is violative of the United States Constitution for the reason that said statute denies Equal Protection in that it does not impose a corresponding duty upon the mother.

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441 U.S. 380, 60 L.Ed.2d 297, 99 S.Ct. 1760
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Craig v. *Boren*,
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Reed v. *Reed*,
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STATUTES CITED:

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No. _____

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OCTOBER TERM, 1982

RONALD WAYNE TAYLOR,
Petitioner

v.

COMMONWEALTH OF KENTUCKY,
EX REL JENNIFER KAREN MAY,
Respondents

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Kentucky.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

The petitioner, Ronald Wayne Taylor, petitions for writ of certiorari to review the order of the Supreme Court of the Commonwealth of Kentucky which denied his motion for discretionary review in this case.

OPINIONS BELOW

The Order of the Supreme Court of Kentucky dated March 23rd, 1982, denying a motion for discretionary review is attached hereto as Appendix A. The order of the Court of Appeals of the Commonwealth of Kentucky entered January 14th, 1982, denying a motion for discretionary review is attached hereto as Appendix B. The Findings of Fact, Conclusions of Law and Order of the Pike Circuit Court entered the 28th day of October, 1981, affirming the Findings of Fact, Conclusions of Law and Order of the Pike District Court is attached hereto as Appendix C. The Findings of Fact and Conclusions of Law and Order of the Pike District Court, dated June 3rd, 1980, is attached hereto as Appendix D. The original judgment in this action rendered by the then Pike County Court and entered on the 7th day of November, 1977, is attached hereto as Appendix E.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The order of the Supreme Court of Kentucky denying a motion for discretionary review was entered March 23rd, 1982. This petition is timely filed within ninety (90) days of that date. Jurisdiction is invoked pursuant to 28 U.S.C. §1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides, in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Kentucky Revised Statute §406.011 provides in pertinent part:

> "The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child."

STATEMENT OF THE CASE

On August 21st, 1977, the respondent, Jennifer Karen May, filed a complaint in the Pike County Court seeking an adjudication of paternity of a male child born out of wedlock on the 29th day of August, 1975. The complaint named the petitioner, Ronald Wayne Taylor, as the alleged father of said child. This

action came on for trial before the Court and a jury on October 29, 1977, and the jury found the petitioner to be the father of the child and set support in the amount of $125.00, per month.

On the 2nd day of January, 1980, the respondent initiated contempt proceedings in the Court in which the decree had been entered alleging the petitioner was in arrears. At this time the petitioner defended the action by attacking Kentucky Revised Statute, §406.011, upon which the support payments were based, as being unconstitutional in that it requires the father of a child born out of wedlock without a corresponding duty on the mother of such child. As evidenced by the findings of fact, conclusions of law and order (See Appendix D), the Pike District Court dismissed the petitioner's constitutional argument and held him in contempt of Court.

An appeal was initiated and timely filed with the Pike Circuit Court which affirmed the decision of the Pike District Court. (See Appendix C.) The petitioner then moved the Court of Appeals for the Commonwealth of Kentucky for discretionary review and this motion was denied. (See Appendix B.) The petitioner's motion for discretionary review to the Supreme Court for the Commonwealth of Kentucky was denied March 23, 1982. (See Appendix A.) This petition was then timely filed.

It should be noted that the Commonwealth of Kentucky, by and through its Attorney General, has

declined to intervene in this action. (See Appendix F & G.)

REASONS FOR GRANTING THE PETITION

The decision of the lower Courts in this case allow Kentucky Revised Statute, §406.011, to remain a viable statute even though it is a direct contradiction of the principles of Equal Protection as set forth in the Fourteenth Amendment. The decisions of the lower Courts are a gross departure from these principles in view of the fact that they are in conflict with numerous decisions of this Court.

At the outset, it should be noted that the case at bar is strikingly similar to the well known case of *Orr* v. *Orr*, 440 U.S. 268, 59 L.Ed.2d 206, 99 S.Ct. 1102 (1972). In that case, Lillian M. Orr, the wife of William Orr, obtained a divorce from William on February 26th, 1974. As a part of that decree, she obtained an alimony award amounting to $1,240.00 per month. Mr. Orr did not pay the alimony as adjudged. On July 28th, 1976, Mrs. Orr, like the case at bar, initiated a contempt proceeding in the Court in which the decree had been entered. Mrs. Orr, like the respondent herein, alleged that the defendant was in arrears. Mr. Orr, as did the petitioner, Ronald Wayne Taylor, defended the action by attacking the statute and requested that such statute be declared unconstitutional because it imposes an obligation of alimony upon husbands but never upon wives. In the case at

hand, the petitioner has been required to pay child support under a Kentucky statute that directs fathers, not mothers, of children born out of wedlock to be liable to the same extent as fathers of children born in wedlock. Aside from the fact that *Orr* involved a divorce statute, the two cases are very similar. As in *Orr*, there is no question but that the petitioner bears a burden he would not bear were he female. *Orr, supra*, at 273.

The obvious intent of KRS 406.011 is to provide support for a child born out of wedlock and this gender based statute only requires the support of the father. Under this statute could the respondent, Jennifer Karen May, as a non-custodial parent, be required to provide support for this child born out of wedlock? A reading of the statute will require a negative answer. In *Orr*, Justice Brennan, speaking for the Court, and citing *Reed* v. *Reed*, 404 U.S. 71, 75, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971), stated that:

> "In authorizing the imposition of alimony obligations on husbands, but not on wives, the Alabama statutory scheme provided that different treatment be accorded . . . on the basis of . . . sex; it thus establishes a classification subject to scrutiny under the Equal Protection Clause." Orr, supra at 278, 279.

Again, aside from the fact that *Orr* involved an alimony statute, this statement should be applied in whole to the case at hand.

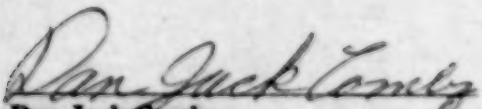
This Court in *Caban* v. *Mohammed*, 441 U.S. 380, 60 L.Ed.2d 297, 99 S.Ct. 1760 (1979), in striking down another gender based statute which granted an unwed mother the authority to block the adoption of her child simply by withholding her consent, but did not give an unwed father a similar right, stated that the states interest in providing for the well being of illegitimate children is important. *Caban*, *supra*, at 391. The unquestioned right of the state to further a desirable end by legislation is not in itself sufficient to justify a gender based statute and under the relevant cases applying the Equal Protection Clause, it must be shown that the distinction is structured reasonably to further these ends. See *Caban*, *supra*, at 391, and *Craig* v. *Boren*, 429 U.S. 190, 97 S.Ct. 451, 30 L.Ed.2d 225 (1971). There is no doubt that the Kentucky statute was designed to insure the support of an illegitimate child, but in that instance where the mother should choose to become the non-custodial parent, the father, as the custodial parent, would be unable to secure support from the mother under this statute.

In sum, this undifferentiated distinction between unwed mothers and unwed fathers cannot stand under the scrutiny of the Equal Protection Clause.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



Dan Jack Combs
COMBS AND LESTER, P. S. C.
207 Caroline Avenue
Pikeville, Kentucky 41501-0551

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Dan Jack Combs, do hereby certify that three (3) true and accurate copies of the foregoing Petition for Writ of Certiorari were this day mailed to the Hon. Michael deBourbon, PRUITT & deBOURBON, P. O. Box 339, Pikeville, Kentucky 41501, Attorney for Respondent.

This 18th day of June, 1982.

Dan Jack Combs Jr.

Dan Jack Combs

APPENDIX

APPENDIX A

SUPREME COURT OF KENTUCKY
82-SC-59-D
(81-CA-2394-D)

RONALD WAYNE TAYLOR — MOVANT

V. PIKE CIRCUIT COURT
#80-X-03

COMMONWEALTH OF KENTUCKY, EX REL
JENNIFER KAREN MAY — RESPONDENT

ORDER DENYING MOTION FOR DISCRETIONARY REVIEW

The motion of Ronald Wayne Taylor for a review of the decision of the Court of Appeals is denied.

ENTERED March 23, 1982.

/s/ John S. Palmore
Chief Justice

* * * * * * *

APPENDIX B

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 81-CA-2394-D

RONALD WAYNE TAYLOR — MOVANT

v. — ON MOTION FOR DISCRETIONARY REVIEW FROM THE PIKE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY, EX REL JENNIFER KAREN MAY — RESPONDENT

* *

ORDER

BEFORE: HAYES, CHIEF JUDGE, HOWERTON and VANCE, JUDGES.

The Court, having considered the motion for discretionary review and the response thereto, and being otherwise sufficiently advised, ORDERS that said motion be, and it hereby is, DENIED.

ENTERED: 1-14-82

/s/ J.W. Howerton
JUDGE, COURT OF APPEALS

* * * * * * * *

APPENDIX C

PIKE CIRCUIT COURT
Division No. II

Action No. 80-X-03

RONALD WAYNE
TAYLOR DEFENDANT-APPELLANT

VS: FINDINGS OF FACT,
CONCLUSIONS OF LAW, and ORDER

COMMONWEALTH OF KENTUCKY,
EX REL JENNIFER KAREN
MAY PLAINTIFF-APPELLEE

* * *

This cause being before the Court on appeal from the Findings of Fact, Conclusions of Law and Order entered on June 3, 1980, in the Pike District Court and from said District Court's Order overruling Appellant's Motion to Vacate said Judgment, and the Court being advised, makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. This is an appeal from a judgment of the District Court to enforce a judgment of child support in the sum of $125.00 per month, entered by the Pike County Court on December 2, 1977, wherein the Court found Defendant-Appellant, Ronald Wayne Taylor, to

be the natural father of a child born to the Plaintiff-Appellee, Jennifer Karen May.

2. The District Court found that Ronald Wayne Taylor was in contempt of Court for failure to make such payments. He appeals, contending that KRS 406.011 is unconstitutional on the grounds that it violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution in that it is gender based. This Statute reads:

> "The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a child born in wedlock ****"

CONCLUSIONS OF LAW

1. Since KRS 406.011 imposes only that duty on an unwed father as there is on a wed father and does not relieve the mother of her duty to support or contribute to the support of the child; and further, both parents of a child born in wedlock are subject to orders of the Court to support such child pursuant to KRS 403.210 and KRS 405.020 (1), it imposes no greater duty on the unwed father than on the mother and this does not violate the equal protection clause of the Fourteenth Amendment.

ORDER

NOW, THEREFORE, IT IS ORDERED by the Court as follows:

1. That the Findings of Fact, Conclusions of Law and Order of the Pike District Court, entered on the 3rd day of June, 1980, be, and the same are hereby affirmed.

2. That this cause is remanded back to the District Court for enforcement of its order.

3. That this appeal is dismissed all at the costs of the Appellant.

This October 28, 1981.

/s/ E.N. Venters JUDGE

* * * * * * * *

APPENDIX D

PIKE DISTRICT COURT
DIVISION NO. I

ACTION NO. 79-J-019
COMMONWEALTH OF KENTUCKY
EX REL
JENNIFER KAREN MAY PLAINTIFF

VS: FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

RONALD WAYNE TAYLOR DEFENDANT

* * * * *

This cause having come on for hearing on Tuesday, June 3, 1980, Plaintiff not present but represented by counsel, Hon. Michael de Bourbon, the Defendant not present but represented by counsel, Hon. Dan Jack Combs, and the Court hearing arguments from both counselors and being otherwise sufficiently advised, finds and orders as follows:

FINDINGS OF FACT

1. That the Defendant, Ronald Wayne Taylor, pursuant to valid judgment of this Court was obligated to pay unto the Plaintiff, Jennifer Karen May, the sum of One Hundred Twenty-Five Dollars ($125.00) per month for the support of the parties' infant child.

2. That the Defendant, Ronald Wayne Taylor, had made no support payments toward the parties' infant child, namely, Jason Keith Taylor, since June 28, 1979 at which time he tendered to the Plaintiff the sum of One Hundred Twenty-Five Dollars ($125.00).

3. That Defendant, Ronald Wayne Taylor, is in arrears in his support obligations for eleven (11) months (July 11, 1979 through May 11, 1980) for a total sum of One Thousand Three Hundred Seventy-Five Dollars ($1,375.00).

CONCLUSIONS OF LAW

That KRS Chapter 406 is constitutional and does place a correspondent duty on the mother of an illegitimate child to provide for the support of said child.

ORDER

NOW, THEREFORE, based on the above Findings of Fact and Conclusion of Law, the Court ORDERS as follows:

That the Defendant, Ronald Wayne Taylor, is in contempt of this Court. However, the Defendant may purge himself of contempt by paying unto the Plaintiff on June 11, 1980 the sum of One Hundred Twenty-Five Dollars ($125.00); and, by paying the amount of One Thousand Two Hundred Fifty Dollars ($1,250.00)

arrearage plus interest at eight percent (8%) by July 25, 1980.

IT IS FURTHER ORDERED that Defendant's Motion for a reasonable attorney's fee is OVERRULED.

Dated this 3 day of June, 1980.

/s/ Richard W. Elswick
JUDGE

* * * * * * * *

APPENDIX E

A copy as:
Filed 11-7-77
JOHN PAUL BLAIR, CLERK
BY /s/ Linda McPeeks D.C.

PIKE COUNTY COURT

ACTION NO. T-P-77-2

COMMONWEALTH OF KENTUCKY
EX REL

JENNIFER KAREN MAY PLAINTIFF

VS: JUDGMENT

RONALD WAYNE TAYLOR DEFENDANT

* * * *

The above entitled cause having come for trial on October 29, 1977, before the Court and a jury, Honorable John R. Phillipps, Trial Commissioner, presiding, and the issues having been duly tried the jury found as follows:

We, the jury find in favor of the plaintiff against the defendant and set the amount of support to be provided by the defendant at $125.00 per month.

Wherefore, by reason of the premises aforesaid the Court enters judgment as follows:

(1) That the defendant, Ronald Wayne Taylor, is the natural father of the boy child, Jason Keith

Taylor, born to the plaintiff, Jennifer Karen May, on August 29, 1975, at Pikeville, Pike County, Kentucky;

(2) That the defendant, Ronald Wayne Taylor, shall pay unto the plaintiff, Jennifer Karen May, the sum of $125.00 per month for the support of said child;

(3) That said support payments shall commence on November 11, 1977, and shall be due and payable on the 11th day of each and every month thereafter until such time as said child shall have attained the age of majority or shall have deceased; and,

(4) That the defendant, Ronald Wayne Taylor, shall pay all costs of this action.

Dated this 7 day of November, 1977.

/s/ John R. Phillipps W.T.R.
JOHN R. PHILLIPPS
TRIAL COMMISSIONER
PIKE COUNTY COURT

The foregoing JUDGMENT was entered on the 7 day of November, 1977.

John Paul Blair, Clerk

BY: /s/ Linda McPeeks, D.C.

The foregoing Judgment and Notice of Entry was served upon the plaintiff by mailing a true copy to the Hon. Kelsey Friend, Jr., Attorney of Record for the defendant, postage pre-paid, this 7 day of November, 1977.

/s/ Linda McPeeks, D.C.

* * * * * * * *

APPENDIX F

(Commonwealth Seal)

COMMONWEALTH OF KENTUCKY
PIKE CIRCUIT COURT
THIRTY FIFTH JUDICIAL CIRCUIT
PIKEVILLE, KENTUCKY 41501

REED D. ANDERSON
JUDGE, DIVISION I

E.N. VENTERS
JUDGE, DIVISION II

July 17, 1981

Hon. Steven Brashear
Office of the Attorney General
State Capitol Building
Frankfort, Kentucky

Re: Pike Circuit Court, Division Two, Action No. 80-X-03 Commonwealth, ex rel, Jennifer Karen May v. Ronald Wayne Taylor

Dear Sir:

The above captioned is a paternity appeal case. The alleged punitive father's counsel, Dan Jack Combs, has challenged the constitutionality of KRS 406.011. He contends that the statute is gender-based and, therefore, violative of the Equal Protection Clause of the United States Constitution.

The purpose of this letter is to notify you of this constitutional challenge as is required by CR 24.03.

Very truly yours,

/s/ E. N. Venters

E. N. Venters

ENV:bmw

cc: Hon. Dan Jack Combs
Hon. Michael de Bourbon
Mrs. Betty Prater Justice, Clerk

* * * * * * *

APPENDIX G

Civil Action No. 80-X-03 — Pike Circuit Court
Division II

COMMONWEALTH, EX REL.
JENNIFER KAREN MAY — PLAINTIFF

V. — NOTICE OF INTENT
NOT TO INTERVENE

RONALD WAYNE TAYLOR — DEFENDANT

* * *

Comes now the Commonwealth of Kentucky, by counsel, and acknowledges receipt of a letter dated July 17, 1981, from Hon. E.N. Venters, Judge, Pike Circuit Court, Division II, regarding the above styled case and further informs the court and the parties hereto that the Attorney General does not intend to intervene.

Respectfully submitted,
STEVEN L. BESHEAR
ATTORNEY GENERAL
/s/ Virgil W. Webb III
VIRGIL W. WEBB III
ASSISTANT ATTORNEY GENERAL
CAPITOL BUILDING
FRANKFORT, KENTUCKY 40601

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Intent Not to Intervene was mailed, postage prepaid, to Hon. Betty Prater Justice, Pike Circuit Court Clerk, Courthouse, Pikeville, KY 41501; Hon. Michael de Bourbon, Attorney at Law, P.O. Box 339, Pikeville, KY 41501; and Hon. Dan Jack Combs, Attorney at Law, 207 Caroline Avenue, P.O. Drawer 551, Pikeville, KY 41501, this 3rd day of August, 1981.

/s/ Virgil W. Webb III
Virgil W. Webb III
Assistant Attorney General
Capitol Building
Frankfort, Kentucky 40601

* * * * * * * *